IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3890 of 2005

DILIP KUMAR NAYAK
V/S
M.D.,S.B.B.J.,JAIPUR & ORS.

Mr. RS SALUJA, for the appellant / petitioner

Mr. PK LOHRA, for the respondent

Date of Order : 24.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This petition is in second round of litigation, seeking to assail the transfer of the petitioner, from Udaipur to Baran.

The petitioner, who is a Dy. Manager in the respondent Bank, was transferred from branch Sector No. 11, Hiran Magri, Udaipur to Baran vide order dt. 12.1.2005. That order was challenged by the petitioner before this Court vide S.B. Civil Writ Petition No. 670 of 2005, which was decided by this Court vide order dt. 28.4.2005. The directions issued therein were as under (being quoted from the representation being Annexure-11):-

> "Thus, this writ petition filed by the petitioner is disposed of in the manner that the petitioner is directed to file a fresh representation regarding transfer within a period of 30 days from today and the respondents shall consider and decide the same either way in accordance with law within two months from the date of receipt of representation. If it is found that the petitioner is entitled for any relief in accordance

> with law, then the same may be given to the petitioner and if the petitioner is not found entitled to the relief sought for, then a reasoned and speaking order may be passed strictly in accordance with law, after affording an opportunity of hearing to the petitioner."

Accordingly, the petitioner submitted the representation on 18.5.2005, being Annexure-11. Thereupon, as directed by this Court, personal hearing was given to the petitioner by the committee on 9.6.2005, and vide Annexure-12, bearing compassion for the physical handicap of the petitioner, benevolence was shown, and he was offered to choose any of the branches in the districts Bhilwara and Kota. That proposal was turned down by the petitioner vide Annexure-13 dt. 22.6.2005, contending inter alia, that he cannot live away from the family, and his family circumstances require that his family cannot be taken out of Udaipur, because he has social and family obligation to be fulfilled, and thereafter vide detailed speaking order, Annexure-14, the representation has been rejected, and he was ordered to stand relieved, as per order dt. 12.1.2005. The petitioner claims to be physically handicapped, and has produced certificate in this regard, being Annexure-1. According to the averments of the writ petition, he was appointed in the Bank in the year 1971, and remained posted at various places in various positions, and in that process, vide order dt. 10.7.2002, he was transferred to branch Salumber, till passing of the order Annexure-3 dt. 26.5.2004, whereby he was transferred to the branch, Sector No. 11, Hiran Magri, Udaipur. The case of

the petitioner is, that while so working, vide letter dt. 22.9.2004, reply/ explanation was sought from the petitioner, for partially disobeying the office order, which was replied vide Annexure-5 dt. 1.10.2004. Then, the petitioner has pleaded illegalities in the assignment of responsibilities to him, probably meaning to contend, that he was justified in disobeying the order, and on that ground has pleaded in para-9, that this event is viewed seriously by the respondent, and as it now transpires, that institutional bias has been developed, and the petitioner is sought to be transferred. Then reference to Regulation 42 of the SBBJ Officers Service Regulations 1979, hereinafter to be referred as the Regulation of 1979, has been made, wherein an officer is liable to transfer to any office or branch of the Bank, or at any place in India, and contends, that this regulation does not supersede the existing placement/transfer policy, and since the transfer of the petitioner is not in accordance with the policy, that is sought to be justiciable. Then, it is alleged, that according to the policy, the incumbent is required to remain at least for a period of three years at the transferred place. Then, the circulars of the respondent Bank, regarding relaxation to the physically handicapped employees have been referred, and it is contended, that on account of malafides, having been developed by Mr. H.S. Verma, the petitioner has been transferred from Udaipur to Baran. Then, in para-15 it is referred that while initiating the departmental enquiry, the petitioner's

representation, submitted pursuant to this Court's order, has been decided, and it is contended to be in violation of circulars and policy, and that without realising the difficulties of the petitioner the representation has been rejected.

A reply has been filed on behalf of the respondents, raising preliminary objections, contending that present petition clearly demonstrates the stubborn and recalcitrant attitude of the petitioner. And that, respecting the indulgence granted by this Court showing compassion and benevolence he was given options vide Annexure-12, which he declined vide Annexure-13, and then, the representation was considered objectively, and the order Annex. 14, has been passed in accordance with law, which is self contained, speaking order, and therefore, no ground is made out for interference. The other objection raised is, that he was transferred keeping in view the administrative exigencies, and there was absolutely nothing wrong with the order of transfer, but the petitioner unnecessarily made an abortive attempt to make mountain out of mole. In earlier writ petition he has only challenged that since he is physically handicapped the transfer is bad in the eye of law, and a very mellow allegations of malafides was made, which did not find favour with the Court, and considering the physical handicapedness of the petitioner indulgence was granted, the directions of this Court were duly adhered to by the respondents, and the

petitioner did not take advantage of the benevolence. Since the transfer order is made in public interest, and administrative exigencies, and is not made in violation of mandatory, statutory rules, or on account of malafides, it is not required to be interfered with. Then, reliance is placed on certain judgments of Hon'ble the Supreme Court, and of this Court. Another objection taken is, that in the past petitioner remained posted in rural areas in the remote places in the category of MMGS-II in Banswara and Gogunda branches, and therefore, the grievance against his posting to Baran branch is preposterous. Merely because he is physically handicapped, he is not immune from transfer, in view of provisions of Regulation 42. It was also contended, that the Bank is providing necessary facilities, like leased furnished accommodation, traveling allowances, transfer allowance, and sufficient joining time etc. Then, another objection taken is, that the petitioner is trying to mislead this Court, by intermingling the issue of disciplinary proceedings, inasmuch as the transfer order was made keeping in view the administrative exigencies, and initiation if disciplinary enquiry has no concern with the transfer. Then, it was pleaded, that assuming for the sake of argument, that there is some remote link between initiation of disciplinary proceedings, and transfer, then too, the petitioner cannot have legitimate grudge, in view of various judgments of Hon'ble the Supreme Court, referred to at page-7 of the reply, as the transfer order does not adversely affect his status, his civil qualifications,

prospectus, financial or visit the person concerned with any penal consequence. Then, regarding the circulars of the Central Government it was submitted, that the language of the circulars is required to be harmoniously construed, in which event it would reveal, that it does not create absolute embargo against transfer of handicapped employee, apart from the fact, that the petitioner being belonging to Group B category, for whom these circulars are of no avail. It is also contended, that these circulars are in the nature of guidelines, and do not have statutory force, as such they are not enforceable under Article 226. Then, para-wise reply has also been given, inter alia contending, that bare perusal of Annexure-4 would reveal, that the allegations against the petitioner were about disobedience of the lawful orders of the superior officers, and that, he has not carried his duty with sense of responsibility, and has created an atmosphere of discard, and acrimony within the Branch which has directly affected the customer service of the branch. Then, regarding Annexure-5 it was pleaded, that the language employed in the explanation is not only indecent, but the same is also intemperate. It is hardly expected from a subordinate officer to utilise such a language, while giving explanation to superior officers. Then, it was pleaded, that Annexure-7 pleaded by the petitioner in para-11 of the writ petition, containing Regulation 42, is un-amended one, while this regulation has been amended since 1.7.2002, the relevant regulation 42 has been reproduced as Annex. R/2, and therefore, the transfer

policy Annexure-8, produced by the petitioner is of no avail, apart from the fact, that the transfer policy is in the nature of guidelines. It is also pleaded, that on a harmonious consideration of the transfer policy also, it would be clear, that in administrative exigencies, the officer can be transferred, and para 3.1 of the transfer policy was specifically pressed into service. It was maintained, that merely because the petitioner is a handicapped officer, he cannot claim absolute immunity from transfer, and his hardship was duly considered with compassion, and since the petitioner is on transferable post, he was rightly transferred. Then, giving factual aspect about the post being available at this very branch from which he has been transferred, it was pointed out, that on account of shifting of CC limits and bill business of Rajasthan Spinning and Weaving Mills Ltd, the C & I division business of Sector-11 branch, has substantially declined, and in view of substantial reduction of the banking business of the branch concerned, it was not in the interest of the bank administration, to retain one more incumbent on the post of Dy. Manager, and therefore, the transfer was necessitated. It was maintained, that Mr. H.S. Verma is not a party in the writ petition, apart from the fact, that he was not competent to transfer the petitioner. It was maintained that the petitioner has made it a prestige point, and has unnecessarily hurled insinuations against the respondents, that they have developed institutional bias, while it would be clear from Annexure-

14, that the representation was examined with full objectivity, and a well reasoned, and speaking order, has been passed, being Annexure-14. It was also maintained that if the officer of the branch is charged with misconduct, the departmental proceedings can very well be initiated, but then, there is nothing to show, that the transfer was in any manner connected with the departmental proceedings, and the grievances of the petitioner were thoroughly examined objectively in Annex. 14.

A rejoinder has been filed by the petitioner, seeking to plead in detail, that the transfer is out come of institutional bias, alleging interalia, that the post of Dy. Managers are lying vacant in Udaipur district itself, the approved strength of Dy. Managers in the branch is two, on which two Dy. Managers are working, including the petitioner, no administrative exigencies, compelling the respondents to fill up the post in Baran branch existed, where the petitioner has been transferred, inasmuch, that post is still lying vacant. The absence of administrative exigencies, in posting the petitioner at Baran, is further clear from the fact, that the petitioner was offered to opt for posting, either at Kota or at Bhilwara, therefore, if the exigencies were there, these offers would not have been made. In this rejoinder, various pleadings have been taken, but then significantly, the stand of the respondent about the Annexure 7 and 8 to be not holding good, in view of Annexure R/2, i.e. the amendment of Regulation 42, has not

been controverted.

I have heard learned counsel for the parties. Though the writ petition is only at admission stage, and I am not required to give that detailed reasons, and recapitulate facts in that detail, as I have already done, however, I have heard learned counsel in detail, and the submissions made by the learned counsel for the petitioner are, that the post is available in Udaipur district itself as pleaded in para-13 of the writ petition, and in view of the circular Annexure-9, issued with respect to physically handicapped persons, the petitioner could not be transferred. Then, submissions were made about Shri H.S. Verma being annoyed by the petitioner, on account of the petitioner having not complied with the illegal directions given by Shri Verma, then a passing reference was made, by contending, that in view of Physically Handicapped Person Act of 1999, proper facilities have to be provided to the petitioner. It was then submitted, that there was no administrative exigencies to transfer the petitioner, and in view of Annexure 12, whereby he was offered to opt any branch in Kota or Bhilwara, it is clear, that his transfer to Baran could be waived, and he could be accommodated in any branch in Udaipur. Thus, the order Annexure-14 is bad.

Learned counsel for the respondents on the other hand, strongly pressed into service Regulation 42, and submitted, that showing highest respect to the orders of

this Court, passed in the earlier writ petition, the petitioner's representation was received, he was given personal opportunity of hearing, by the concerned committee, who heard him threadbare, and then extending benevolence, offer was made to the petitioner vide Annexure-12, but, as recapitulated above, he flatly refused to opt for either of the two districts. It was maintained, that even if it is assumed, that Mr. H.S. Verma was annoyed, his annoyance is of no consequence, as he has no say in the matter of transfer of the petitioner. It was maintained that the transfer is incident of service, and unless mandatory/statutory rule is violated or there is malafide the transfer order cannot be assailed. Reliance was placed on the following judgments:-

1. Gujarat Electricity Board & Anr. Vs. Atmaram Sungomal Poshani, reported in 1989(2) SCC 602,

2.Shilpi Bose (Mrs.) & Ors. Vs. State of Bihar & Ors., reported in 1991 Supp (2) SCC 659

3.Dr. Archana Patni Vs. State of Rajasthan, reported in 1998(2) WLC-1

4.Arjun Singh Vs. Bureau of indian Standards & Ors., reported in 2000(3) WLC (Raj.) 13

Then reliance was also placed on National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & Anr., reported in 2001(8) SCC 574. Then relying on the judgment of Hon'ble the Supreme Court in State of U.P. & Anr. Vs. Siya Ram & Anr., reported in 2004(7) SCC 405, and Union of India & Ors. Vs. Janardhan Debanath & Anr.,

reported in 2004(4) SCC 245, it was contended that even after initiation of departmental proceedings, the incumbent can be transferred, and incumbent can also be transferred on the ground of indecent behavior in which event also, the transfer order is not required to be interfered with.

In rejoinder the learned counsel for the petitioner sought to distinguish the judgment of Hon'ble the Supreme Court, in Siya Ram's case, and submitted, that transfer order was out come of institutional bias, and is therefore, liable to be interfered with.

I have considered the submissions, and have gone through the various pleadings, and the judgments cited at the Bar. True it is, that the transfer of the petitioner from Udaipur is not palatable to the petitioner, and the grievance of the petitioner is not about transfer to Baran, but as appears from Annexure-13, that he wants to stick to Udaipur itself, on the ground of his family circumstances, and also on the ground of family and social responsibilities being there to be discharged by him. It is also true, that the transfer order dt. 12.1.2005 was assailed by the petitioner by way of earlier writ petition, which was disposed vide order dt. 28.4.2005, operative part whereof has been recapitulated above. It is not in dispute, that thereafter the petitioner submitted the representation Annexure-11, and thereupon the petitioner was given opportunity of personal threadbare hearing by the

committee, and the committee has passed the detailed speaking order Annexure-14, which not only runs into more than two closely typed full scaped pages. It also considered all the relevant aspects, including the provisions of Regulation 42, transfer policy, the physical handicapped-ness of the petitioner, the guidelines on the transfer/posting of the officers, issued vide communication dt. 27.12.2004, and it was found that the transfer order dt. 12.1.2005 was within the norms stipulated under Central Government Policy and Reserve Bank of India Guidelines. It was also considered that the petitioner had earlier been posted at rural areas, and away from Udaipur like Banswara and Gogunda branches, where he comfortably shifted his family, and the bank provides all necessary facilities to make sure, that the officer, along with family, wherever he is transferred does not face difficulties. Then, options given vide present Annexure-12 was also considered, and the representation was rejected.

I may gainfully quote the Regulation 42, as pressed into service by the petitioner, having been produced as Annexure-7, and the Regulation 42, as is in force, which has been produced by the respondent as Annexure R/2. Regulation 42, as contained in Annexure-7 reads as under:-

> "42. Every officer is liable for transfer to any office or branch of the Bank or to any place in India.
>
> Note: (i) By this provision, it is not the

intention to supersede the existing placement/ transfer policy (PER/21/80 dated 10-4-1980).

(ii) Transfer Policy is given in the Appendix-6."

The Regulation 42, as contained in Annexure R/2 reads as under:-

"42 Every officer is liable for transfer to any office or branch of the Bank or to any place in India."

Thus, a combined reading of the two facets of Regulation 42 does show, that the two notes, which existed as appendages of Regulation 42, once upon a time, conspicuously, find no place after amendment, made in 2002, while much of the burden of the argument of the learned counsel for the petitioner was on the Regulation 42, as contained in Annexure-7. Of course, on the face of Regulation 42, as contained in Annexure-7, perhaps I would have been inclined to go into the aspects, highlighted from the transfer policy, by attempting to take a view, that in view of the notes appended to the Regulation 42, the transfer policies might be contended to be forming part of Regulation 42, but then, in view of the amendment of Regulation 42 (Annexure R/2), the above notes have been omitted, which omission cannot be said to be without any significance, rather the omission clearly intends to bring down the polices, and circulars, at the statutes, only as recognised by various judicial pronouncements,

consistently, being not of statutory nature, and being only policy matters, not capable of being enforced under Article 226 jurisdiction, and Regulation 42 obviously renders every officer liable to be transferred to any office or branch of the Bank or to any place in India. It has not been contended, that by the impugned transfer, the Status, service conditions, or emoluments, or perquisites, or chances of promotion, are, in any manner adversely affected. Thus, the only ground that remains is, as to whether, on account of physical handicap, the petitioner could not be transferred, and/or as to whether, the transfer is consequence of so called difference with the branch manager and the petitioner.

In my view, it is admitted position, that the petitioner had earlier worked in rural and remote areas of Banswara and Gogunda. The mere fact that the petitioner is physically handicapped cannot be said to be creating any absolute embargo against transfer of the petitioner, outside Udaipur or Udaipur District.

So far as the alleged difference between petitioner and Mr. H.S. Verma is concerned, apart from the fact, that Mr. H.S. Verma has not been impleaded as party in the writ petition, it cannot be accepted, that simply because, according to the petitioner, there happens to be some difference between the petitioner and Mr. H.S. Verma, the entire administration of the bank entertained a bias

against the petitioner, on that count alone, as no other bias or malafide is even alleged.

Long drawn arguments were made, in an attempt to justify, the absence of administrative exigencies, inter alia contending, that even after the order dt. 12.1.2005, the petitioner has been continuing in that very branch, and that, in view of Annexure-12, it cannot be said that administrative exigencies required the petitioner's transfer to Baran, so also, that in view of the branches available in Udaipur district, it was not necessary for the respondents to transfer the petitioner outside Udaipur district itself.

Suffice it to say, that the petitioner has continued in the branch, despite order dt. 12.1.2005, only in view of the orders of this Court, passed from time to time, and significantly, the stand taken by the respondents, about decline in the business, and administrative requirement of not keeping two persons of this grade in the branch, was not disputed by the petitioner, during course of hearing. Therefore, this much is clearly an established situation, that administrative exigencies did and do require the petitioner to be uprooted from the present place of posting. Thereafter, where he should be posted, in my view, cannot be made a subject matter of adjudication by this Court under Article 226, unless the grounds recognised by the series of judgments of

Hon'ble the Supreme Court, and this Court, were made out, to assail the transfer of the petitioner at Baran. Admittedly, options were given to the petitioner vide Annexure-12, which the petitioner flatly declined to avail, and insisted on sticking to Udaipur. In those circumstances, it was the absolute discretion of the respondents, as to where should the petitioner be posted, when he is required to be transferred from that particular branch, and exercise of that discretion is not capable of being dictated by the petitioner, nor is required to be interfered with by this Court under Art. 226 jurisdiction. Principles have been laid down by Hon'ble the Supreme Court in the various judgments cited by the learned counsel for the respondent referred to above with sufficient clarity and precision, and for the purpose of brevity, in view of the fact, that the matter is at admission stage, I need not quote the relevant paras of various judgments, referred to above.

So far the transfer being in the nature of punishment is concerned, the judgment in Siya Ram's case, provides sufficient answer. It was a case, where departmental proceedings had been initiated, but the concerned State Public Service Commission did not approve, and therefore, the disciplinary proceedings could not be carried to logical conclusion, and the person was transferred, which transfer was assailed, and Hon'ble the Supreme Court did not interfere therewith, and simply

noticed the desire of the incumbent to submit representation, and observed, that if such representation is made to the appropriate authorities, the same shall be considered in its proper perspective, and in accordance with law, and at the same time Hon'ble the Supreme Court declined to express any opinion in that regard. Likewise in Jnardhan's case, the transfer of the employee, on the ground of his being undesirable or inefficient or misbehaving, was assailed, and the Tribunal declined to interfere with the transfer, and when that was assailed in writ, the positive stand taken was, that the incumbents not only misbehaved with the Director (Postal Services), a senior lady officer, she was confined and dragged from one room to another, and this was done with a view to force her to withdraw the charge-sheet against the Dy. Postmaster, and she was abused in filthy language, and was physically manhandled, which conduct was unbecoming of an employee, and with a view to enforce discipline, and to avoid recurrence of such unfortunate incident, they were transferred. The High Court held, that transfer was impermissible, as it was a measure of penalty, and the seniority and the promotional prospects were likely to be affected. Significantly in the transfer order it was mentioned, that the employees were undesirable, as they had misbehaved, and the transfer order was passed without any enquiry to find out, as to whether they committed any misconduct, or that they were undesirable. Interfering with that order of the High Court, Hon'ble the Supreme Court

held in para-14 as under:-

> "14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee is public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

In view of the above judgments of Hon'ble the Supreme Court, the transfer order, or the order upholding the transfer order, cannot be interfered with in this writ jurisdiction.

Thus, taken from any stand point, I do not find any force in the writ petition. The same is therefore, dismissed summarily.

(N P GUPTA),J.